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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Pronounced on: 28.06.2023

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W.P.(C) 17517/2004

MAHENDER KUMAR GODHA & ORS. Petitioners

Through: Mr. Ankit Jain and Mr. Aditya Chauhan, Advocates for P-1 & P-3.

Mr. Rajive Bhalla, Senior Advocate with Mr. Arup Sinha, Mr. Sumeir Ahuja and Ms. Akamnksmha Gulati, Advocates for P-4 & P-5.

versus

M/O URBAN AFFAIRS & EMPLOYMENT & ORS

..... Respondents

Through: Mr. Kiritiman Singh, CGSC for UOI with Ms. Vidhi Jain, Mr. Waize Ali Noor, Ms. Kunjala Bhardwaj, Mr. Madhav Bajaj, Advocates. Mr. Tushar Sannu, ASC for NDMC.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

JUDGMENT

NAJMI WAZIRI, J

1. This petition seeks the following reliefs:

"A. Certiorari, quashing the letter dated 14.09.2004 issued by the respondent No.1 consequently the order dated 13.10.2004 alleged to have been passed by the



respondent No.2 and communicated to the petitioner by the respondent No.2 vide letter dated 14.10.2004.

B. Mandamus directing the respondent No.2 to release the sanctioned building plans to the petitioners in regard to their property No. 35, Golf Links, New Delhi.

C. Certiorari, quashing the notice dated 23.09.2004 bearing No.CA/39/STC/S issued by the respondent No.2.”

2. The petitioners' case is that they had applied for sanction of Revised Building Plan of their property bearing No. 35, Golf Links, New Delhi, admeasuring 1,570 square yards abutting a 80 feet wide road (more than 24 meters). The said property had been converted from leasehold to freehold in 2002. The Building Plan was submitted on 06.05.2003 in terms of the previous Building Bye-laws and Master Plan-2001. The plan was sanctioned by letter dated 03.07.2003 and construction ensued. Pursuant to vacation of the stay on Notification dated 23.07.1998 by the Supreme Court on 12.12.2003, additional FAR, coverage area and height became available to the petitioners. They could either construct up to the permissible additional FAR or to get the already extra built-up area compounded, as per Rules. The petitioner submitted the Revised Building Plans on 04.03.2004, for approval of the third floor. It was sanctioned by NDMC on 20.08.2004. As of that date Golf Links area/colony was considered outside the Lutyens Bungalow Zone ('LBZ').



3. An affidavit filed on behalf of R-1, through an Under Secretary, Delhi Division, Ministry of Urban Development ('MOUD'), Government of India, states that till 01.09.2004, Bengali Market area and Golf Links area were considered outside LBZ, in accordance with MOUD's letter dated 08.10.1997. Therefore, cases related to buildings in these areas were not referred by NDMC to Delhi Urban Art Commission ('DUAC'). Annexure-2 to the said affidavit lists ten instances between 31.01.2001 and 01.09.2004 in which Building Plans were sanctioned by NDMC, without reference to DUAC. Except two plots of land 1045.54 sq.mts and 1250.06 sq.mts in Golf Links and the petitioners' land being the largest of them all, with a size of 1570 sq.mts, the other plot sizes were under 314 sq.mts. The five plots in the Bengali Market area admeasured only 177.67 sq.mts. The road width in each of the cases was less than 24 mts. The petitioners' plan had already been sanctioned on 20.08.2004 i.e. prior to the Golf Links area was brought into the LBZ. It is only when an area falls under the LBZ that reference to DUAC would become necessary, otherwise LBZ would have no jurisdiction in the matter. The sanction of the petitioners' Revised Building Plan was intimated to them through a letter issued on 20.08.2004. It is reproduced as under:



**NEW DELHI MUNICIPAL COUNCIL
DEPARTMENT OF ARCHITECTURE & ENVIRONS
PALIKA KENDRA : NEW DELHI**

(23)

Sh. Mahender Kumar Godha,
Sh. Narendra Kumar Godha &
Sh. Manoj Kumar Godha
35, Golf Links,
New Delhi.

**DEPT OF
ARCHITECTURE & ENVIRONS
NDMC, NEW DELHI - 110011.**
DISPATCH NO/8746-47/C/04
DATE 20-8-04

Subject : Revised Plans in r/o 35, Golf Links, New Delhi.

With reference to your Building application received vide scheme No. 4331 dated 01.07.2004 regarding the subject cited above, it is to inform you that the Chairperson, NDMC has accorded approval dated 18.08.2004 to the plans submitted by you subject to following conditions:

I. Depositing of :-

- (a) Rs. 2,92,442/- as additional betterment charges for an area of 649.87 sq.mt. @ Rs.450/- per sq.mt.
- (b) Rs.2,93,373/- as levy on an area of 651.94 sq.mt. @ Rs.450/- per sq.mt.
- (c) Rs.35,013/- as compounding charges for the basement area of 350.13 sq.mt. @ Rs.100/- per sq.mt. beyond sanctioned but within permissible limits.
- (d) 1% of the project estimate as Cess towards the "Building and Other Construction Worker Welfare Cess Act, 1996" and submission of the project estimate.
- (e) Rs.15,000/- as adhoc compounding charges for deviations from the sanctioned plan.

II. Submission of copy of plumber's registration certificate.

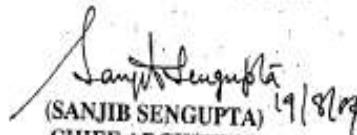
III. Submission of an undertaking of non stacking of building material/malba at Govt./Mpl. land.

IV. Submission of an undertaking that no additional dwelling units beyond sanctioned shall be constructed.

V. Submission of NOC/Approval from DUAC.

VI. Necessary corrections in plans w.r.t. coloring etc. and submission of remaining elevation, dimensions, as per area chart.

You are therefore required to do the needful and get plans released. In case, of failure on your part to comply with the above within a period of 60 days w.e.f. today, the sanction so granted shall deem to have been revoked.


 (SANJIB SENGUPTA) 19/8/04
 CHIEF ARCHITECT

Signature Not Verified

Digitally Signed By KAMLESH KUMAR

Signing Date: 28.06.2023
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4. Clause V of the aforesaid letter required the petitioners to submit NOC/approval from DUAC. The legal basis for the same is not specified in the aforesaid approval letter. *Ex facie*, the aforesaid condition would be applicable only if there was a legal mandate for the same. In the absence of a legal requirement, the said condition would be of no consequence and the approval of the revised plan would have to be read as complete irrespective of clause V.

5. On 12.08.2005, this court had recorded in its order as under:

“Issue involved in the writ petition is whether enforcement of NBZ with effect from 1.9.2004 would take away rights of those who had obtained approval as per FAR applicable prior to 1.9.2004.”

6. This question was reiterated in orders dated 18.08.2006 and 13.11.2006. In compliance of the directions issued on the latter date, the respondents placed on record Minutes of the Meeting convened by the MOUD including members from NDMC and DUAC. The meeting was held on 18.10.2006 and its records, *inter-alia*, as under:

“At the outset Jt. Secy. (D & L) requested Chief Architect, NDMC to explain the issues involved in the case. CA, NDMC mentioned that NDMC had conveyed its approval to the Revised Building Plan submitted by the party on 18.8.2004, subject to the condition that clearance from DUAC will have to be obtained. Before DUAC could give its clearance a clarification was issued by this Ministry on 1.9.2004 regarding applicability of LBZ guidelines. JS(D&L) desired to know whether there was any provision under the



building bye-laws for granting conditional sanction to building plans. CA, NDMC clarified that in terms of clause 6.7.4 of the Unified Building Bye-laws, the Authority is required to intimate in writing to the person who has given notice for sanction of Building Plan either its sanction or refusal of sanction or any intimation within a period of 60 days, failing which the plans are deemed as "sanctioned". The communication sent to the party advising it to seek clearance from DUAC falls in the category of intimation. "

7. The original guidelines required submission of building plans for 'Large Residential Buildings' to DUAC for approval. The guidelines were amended to define 'Large Residential Buildings' as those which abut a road with a width of 24 mtr. or above or having a plot area of more than 500 sq.mtr. On 20.12.2000, the DUAC decided to delete the above definition of 'Large Residential Buildings' and informed the NDMC that revised guidelines will be intimated in due course and the same have not yet been issued. Therefore, there was no requirement of seeking the DUAC's approval since the DUAC itself has deleted the requirement of its approval for large building of plot size of more than 500 sq. mt. Extracts from the NDMC's file, with respect to the aforesaid decision, forms Annexure-3 to the aforesaid affidavit of the Under Secretary, MOUD, and the same is reproduced hereunder:



ANNEXURE-III

EXTRACTS FROM NDMC'S FILE WHERE A DECISION HAD BEEN TAKEN BY THE COMPETENT AUTHORITY ON 4.3.2003 TO THE EFFECT THAT RESIDENTIAL BUILDINGS NEED NOT BE REFERRED TO DUAC EXCEPT THOSE FALLING IN LBZ AREA

DEPUTY CHIEF ARCHITECT (D.C.A.)'S REMARKS

The architect of the party has made necessary corrections on 03.02.2003. Now no construction is falling in set back. According to the proposal, ground coverage, FAR and height of the building etc. are within the permissible limits. The proposal is for demolition of the main block and reconstruction of the building while retaining the garage block. As far as the case of referring to DUAC is concerned, the letter from DUAC dtd. 20.12.2000 may be perused and so in view of it the case is placed for consideration and decision as per the agenda report.

Sd/- D.C.A.
4.2.2000

RECOMMENDATIONS OF CHIEF ARCHITECT (CA)

May kindly approve the proposal subject to payment of 'A' above and compliance of 'B' above. As far as reference to DUAC, the DUAC guidelines originally required "Large Residential buildings" to be referred to DUAC. Later, the DUAC amended its guidelines to define "Large Residential buildings" as those which abut on 24 mtrs. wide road or more or having plot area more than 500 sqm. Subsequently, the DUAC in its meeting held on 20.12.2000 decided to delete the above definition of "large residential buildings" and informed that the revised guidelines on this issue would be intimated in due course. No communication has been received since then.

In view of above, this and other such residential buildings need not be referred to DUAC (except those falling in LBZ). Hence, the proposal is placed for approval as per first para of this report.

Chairperson O.K.

Sd/- CA
4.2.2003
Sd/- Chairperson
4.2.2003



The said recommendation of DUAC was approved by the NDMC on 04.03.2003.

8. The petitioners contend that even after Golf Links was brought within the LBZ on 02.09.2004, building plans were sanctioned without reference to the DUAC for plot sizes of only 313.54 sq.mts, abutting a road less than 24 mtrs. in width. The logical inference is that after the said deletion, the NDMC understood and interpreted the guidelines and so did the DUAC, that no permission/approval was required from DUAC for 'Large Residential Buildings.' Therefore, the petitioners submit that the revocation of their Revised Building Plan, by the impugned order dated 15.10.2004, is illegal, arbitrary and ought to be set aside.
9. Mr. Kirtiman Singh, the learned CGSC contends that the role of the Urban Arts Commission is delineated in the Delhi Urban Art Commission, Act 1973 as under:

“...Functions of the Commission

11 (1) It shall be the general duty of the Commission to advise the Central Government in the matter of preserving, developing and maintaining the aesthetic. Quality of urban and environmental design within Delhi and to provide advice and guidance to any local body in respect of any project of building operations or engineering operations or any development proposal which affects or is likely to affect the sky-line or the aesthetic quality of surroundings of any public amenity provided therein.



(2) *Subject to the provisions of sub-section (1), it shall be the duty of the Commission to scrutinise, approve, reject or modify proposals in respect of the following matters, namely:-*

- (a) *development of district centres, civic centres, areas earmarked for Government administrative buildings and for residential complexes, public parks and public gardens;*
- (b) *re-development of the area within the jurisdiction of New Delhi Municipal Committee including Connaught Place Complex and its environs, Central Vista, the entire bungalow area of Lutyen's New Delhi, and such other areas as the Central Government may, by notification in the Official Gazette, specify;*
- (c) *plans, architectural expressions and visual appearance of new buildings in the centres, areas, parks and gardens specified in clauses (a) and (b) including selections of models or statues and foundations therein,*
- (d) *re-development of areas in the vicinity of Jama Masjid, Red Fort, Qutab, Humayun's Tomb, Old Fort, Tugalkabad and of such other places of historical importance as the Central Government may, by notification in the Official Gazette, specify;*
- (e) *conservation, preservation and beautification of monumental buildings, public parks and public gardens including location or installation of statues or fountains therein;*
- (f) *under-passes, over-passes and regulations of street furniture and hoardings;*
- (g) *location and plans of power houses, water towers, television and other communication towers and other allied structures;*



(h) any other project or lay-out which is calculated to beautify Delhi or to add to its cultural vitality or to enhance the quality of the surroundings thereof;

(i) such other matters as may be prescribed by rules.

Explanation- for the purposes of this sub-section---

(i) "civil centre" means the Headquarters of a local body comprising therein, its office buildings and buildings and buildings intended for cultural activities;

(ii) "Connaught Place Complex" means the area comprising Connaught Place and its extension measuring approximately 140 hectares, being the area described as Zone D-I (Revised) in the Delhi Master Plan;

(iii) "district centre" means a self-contained unit created in the Delhi Master Plan comprising areas for retail shopping, general business, commercial and professional offices, forwarding, booking and Government offices, cinemas, restaurants and other places of entertainment.

(3)Without prejudice to the provisions contained in sub-sections(1) and sub-section(2), the Commission may suo moto promote and secure the development; re-development or beautification of any areas in Delhi in, respect of which no proposals in that behalf have been received from any local body.

Duty of local bodies to refer development proposals, etc. to the Commission

12. Notwithstanding anything contained in any other law, for the time being in force, every local body shall, before according approval in respect of any building operations, engineering operations or development



proposals referred to in sub-section (1) of section 11 or intended to be undertaken in any area or locality specified in sub-section (2) of that section, refer the same to the Commission for scrutiny and the decision of the Commission, in respect thereof shall be binding, on such local body.

Appeal to the Central Government in certain cases.

13. In any local body is aggrieved by a decision of the Commission in respect of any building operation, engineering operation or development proposal intended to be undertaken or notified, as the case may be, by that local body and referred to the Commission under section 12, the local body may, within sixty days from the date of such decision, prefer an appeal to the Central Government and the Central Government may pass such order thereon as it deems fit.

Power to revise decision in certain cases

14. Nothing contained in this Act shall preclude the Central Government from calling for and examining, on its own motion, if it considers it necessary so to do in the public interest, any case in which a decision has been made by the Commission under section 12 but no appeal lies thereto, and passing such order thereon as it thinks fit:

Provided that no such order shall be made prejudicially affecting any person except after giving him an opportunity of making a representation in the matter.

Powers of the Commission

15. For the purpose of performing its functions under this Act, the Commission shall have the same powers as are vested in a civil court while trying a suit under the Code of Civil Procedure, 1908 [5 of 1908], in respect of the following matters, namely:



- (a) summoning and enforcing the attendance of any person and examining him;
- (b) requiring discovery and production of any documents;
- (c) receiving evidence on affidavits;
- (d) requisitioning any public record or copies thereof from any office;
- (e) any other matter which may be prescribed by rules..."

10. He also refers to the dicta of the Supreme Court in *NDMC vs Tanvi Trading and Credit Private Limited & Ors.*, (2008) 8 SCC 765 which has held as under:

"39. It is well settled that the law for approval of the Building Plan would be the date on which the approval is granted and not the date on which the plans are submitted. This is so in view of para 24 of the decision of this Court in Usman Gani J. Khatri v. Cantonment Board. It would not be out of place to mention that on 07.02.2007, the Master Plan, 2021 has been approved in which the LBZ guidelines have been incorporated and since the plan submitted by the respondents was not approved up to the date of coming into force of Master Plan of 2021, the LBZ guidelines will apply with full force to the plan submitted by respondents and the plan which is contrary to the LBZ guidelines could not have been directed to be sanctioned..."

11. There can be no dispute about requirement of DUAC's approval of a Building Plan for any property/land falling in the LBZ. However, the role and jurisdiction of the DUAC would commence only when an area or building comes within the



LBZ. In the present case, Golf Links area was brought into the LBZ on 01.09.2004. The petitioners' Revised Building Plan had already been sanctioned by the NDMC on 20.08.2004 i.e. much prior to any obligation upon NDMC or the applicant to submit the Revised Building Plan to DUAC for approval or for NOC. The approval of DUAC was not mandatory on 20.08.2004. DUAC itself, by its aforesaid decision dated 20.12.2000, had excluded building plans of plot size of lands above 500 sq. mts., abutting roads with width of more than 24 mts. categorized as 'Large Residential Buildings,' from being referred to it, till revised guidelines on the issue, were intimated to NDMC, in due course. The revised guidelines have not been framed, issued or intimated as yet. Therefore, approval of DUAC would become requisite only from 01.09.2004 when Golf Links area was included in the LBZ. Since the Revised Building Plan had already been sanctioned on 20.08.2004, the condition under clause V for NOC/approval from DUAC was not mandatory and indeed, irrelevant on that date. Accordingly, the same would have to be read as inapplicable and redundant. Furthermore, from the list of ten sanctioned Building Plans detailed in Annexure-2 of the affidavit filed by MOUD, it is noted that two Building Plans were sanctioned on 18.08.2004 and 10.09.2004. The first property listed in the said Annexure-2 is of a land admeasuring 1045.54 sq.mts on a road less than 24 mts wide but its Building Plan was sanctioned by NDMC without referring to DUAC on 18.08.2004. The petitioner's



Building Plan was sanctioned two days thereafter on 20.08.2004. Interestingly, the petitioner's land admeasures 1570 sq. mts. and abuts a road with more than 24 mts. width, therefore, it meets the requirement of DUAC decision dated 20.12.2000, which does not mandate and rather excludes DUAC's approval or sanction for such 'Large Residential Buildings'. It is to be noted that on 10.06.2004 another property in Golf Links admeasuring 1250.06 sq. mtrs. abutting a road with more than 24 mtrs. width was sanctioned by NDMC without reference to DUCA.

12. Keeping the aforesaid in view, the court is of the opinion that as of 20.08.2004, when the petitioner's Revised Building Plan had been sanctioned by NDMC, there was no requirement for the NDMC or the petitioner to seek prior approval of the DUAC. Furthermore, the petitioner is equally placed with the persons at serial nos. 1 & 2 in aforesaid Annexure-2 of the MOUD's affidavit and has to be treated on parity. Not treating them so would be discriminatory and arbitrary. Indeed, seven Building Plans have been sanctioned without reference to DUAC for lands admeasuring only 1/5th of the petitioner's plot size. Clearly, the petitioners have made out a case for quashing of the letter dated 15.10.2004, and reiteration of the Revised Building Sanction Plan dated 20.08.2004 and for deleting the clause V of the latter approval, which seeks submission of NOC/approval from DUCA.



13. In view of the above, the case is remanded to the New Delhi Municipal Council to review and revise its cancellation order dated 15.10.2004 and issue a revised building plan in terms of the extant rules/guidelines as of 20.08.2004, without clause V, within a period of two months from the date of receipt of a copy of this order.
14. The petition is allowed and disposed-off in the terms of the above.

NAJMI WAZIRI, J

JUNE 28, 2023
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